Committee, on a matter being referred to it by the Investigation Committee, "after due inquiry has been made in accordance with the rules of the Society", to exercise the disciplinary powers conferred on it by the Act. No rules of the Society relating to inquiries by the Disciplinary Committee have been made and accordingly, until such rules have been made, the Disciplinary Committee cannot lawfully hold any inquiry. In my opinion there is no substance in this contention. Where no rules have been made to regulate the procedure to be followed during an inquiry, the Disciplinary Committee can lawfully exercise the disciplinary powers conferred on it by section 34 if it conducts the inquiry in accordance with the rules of natural justice. It is to be observed that in the present case it is not contended that the rules of natural justice have not been complied with and indeed there could be no grounds for such a contention.

The last main contention by Mr. Hilborne on behalf of the respondent is that because the charge failed to give particulars of the alleged offence one of the rules of natural justice has not been complied with. His submission before me is that in proceedings of this nature the charge must contain particulars of the alleged offence and in the present case the charge failed to give particulars of the alleged offence because it is framed in the alternative by alleging "grave impropriety *or* infamous conduct in a professional respect." I find this submission entirely groundless. The particulars are clearly set out in the charge. His real complaint with regard to the charge as framed seems to be that it is bad because it is not permissible according to the rules of natural justice to frame in one charge two separate offences in the alternative. If that is his real complaint no authority has been cited to support this contention and I suspect none can be found because there is no such rule of natural justice. One of the requirements of natural justice is that a person must be given adequate notice of the case against him to enable him a fair opportunity of answering it. In the present case the charge contained particulars which clearly met this requirement.

The last contention is that in respect of the order for costs, the amount fixed included an item for $3,800 as Legal Advisor's Fees which, it is submitted, should not be taken into account in fixing the amount of the costs. This argument disregards the provisions of section 34(3)(e) of the Act which empowers the Disciplinary Committee to order the member of the Society concerned "to pay to the Society such sum as it deems fit in respect of the costs *and expenses of and incidental to* any inquiry."

For all these reasons the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Hilborne & Co.; Lee & Lee.*

THE "LESNOY"
"VIRA I" (OWNERS) v. "LESNOY" (OWNERS)

[O.C.J. (D'Cotta J.) March 29, 1979]

[Singapore — Admiralty In Rem No. 44 of 1973]

Shipping Law — Negligence — Collision — Collision in daylight between ship under way and another lying at anchor — Prima facie evidence of fault — Burden of proof — Damages.

The plaintiffs in this case claimed against the defendants for damages arising out of a collision between their vessel "Vira I" and defendants' vessel "Lesnoy" which was caused by the defendants' negligence. The collision occurred at the Eastern Anchorage, Singapore on February 23, 1972.

On February 22, the plaintiffs' vessel the *Vira* was anchored in the Eastern Anchorage at about 1600 hours. The defendants' vessel the *Lesnoy* was also anchored about 200 metres away. At 1100/1130 hours the next day a collision took place between the two vessels. The plaintiffs claimed that the *Vira* was stationary at the time of the collision. The defendants did not call anyone from the *Lesnoy* as witnesses. Their only witnesses were from the Singapore Adjusters & Surveyors Ltd. who produced the survey certificate and two other witnesses who were not in a position to state how the accident occurred as they were not at the scene of the collision.

Held: in the case of a collision in daylight between a ship under way and another which is proved or admitted to be lying at anchor in a proper place, the burden is upon the former to show that she was not at fault, for when a steamship runs down a vessel at her moorings in broad daylight, that fact is by itself *prima facie* evidence of fault.

Case referred to:-

(1) *"City of Peking"* v. *The Compagnie Des Messageries Maritimes* (1888) 14 App. Cas. 40.

ADMIRALTY *IN REM.*

G. Pannirselvam for the plaintiffs.

P. Selvadurai for the defendants.

Cur. Adv. Vult.

D'Cotta J.: The plaintiffs' claim is in respect of damages arising out of a collision between their vessel "VIRA I" and the defendants' vessel "LESNOY" which was caused by the negligence of the defendants, their servants or agents and which occurred at the Eastern Anchorage, Singapore, on February 23, 1972.

On February 22, 1972, the plaintiffs' vessel the Vira, a motor tanker of gross tonnage 1292 (hereinafter called "the VIRA") was anchored in the Eastern Anchorage at about 1600 hours; also anchored in the same anchorage about 200 metres away was the defendants' vessel the LESNOY of gross tonnage 1920 (hereinafter called "the LESNOY").

On February 23, 1972, at about 1100/1130 hours a collision between the two vessels took place. The question for determination by the court is what caused the collision i.e. was either vessel or both responsible for the collision. According to the evidence of the Master of the VIRA, Ngyen Van Chieu (PW1) the vessel arrived in Singapore on February 22, 1972 and anchored in the Eastern Anchorage at about 1600 hours. At about 1800/1900 hours he saw the LESNOY also anchored there. On the morning of February 23, 1972, the Master of the VIRA left his vessel at about 9.00 a.m. for the Agents' office in Singapore. At about 12 noon that day, he was informed that there had been a collision. Immediately

he returned to his vessel and took bearings. He discovered that the VIRA was still in the same position where she was anchored the day previous. Before he left his vessel that day for the Agents' office, he had left the Chief Engineer, Phok Sieng (PW2) in charge of the VIRA.

Under cross-examination, the Master said that it was not possible for the VIRA to have dragged anchor and that ever since he took command of the vessel i.e. about a year previously the vessel had never dragged anchor at any time. He was certain on his return to the vessel when he took his bearings that the measurements were correct and that the VIRA had not moved at all. He had seen the LESNOY on the evening of February 22 at a distance of about 200 metres away from the VIRA.

The Chief Engineer of the VIRA was on board the ship at the time of the collision. He confirmed the fact in evidence that the VIRA had anchored the day previously and the fact that the LESNOY was also anchored there. At the time of the collision the Chief Engineer was in the dining room mess having his lunch when he heard people shouting. He looked out of the window of the dining room mess and saw the LESNOY coming, whereupon he ran away. When he reached the door of the dining room mess he heard an impact; he went on the deck and saw the LESNOY about 10 metres away from the VIRA. He cannot remember if she was moving; it was not raining and there was no wind. He was unable to say if there was a strong current. After the collision he saw the LESNOY moving to its original position.

Under cross-examination, the Chief Engineer said that when he first saw the LESNOY from the dining room mess window, it was 2 to 3 metres away from him. He only saw part of the side of the LESNOY which was the hull. He also stated that before the collision the VIRA was not swinging in any way and that the vessel was stationary. He went on to say that he could see the anchor chain of the other vessel the LESNOY and demonstrated with a string the position of the chain at an angle of 45°. He was also able to see the chain through the window. When he went on the deck after the collision, the LESNOY was on its starboard quarter moving at an angle of about 30 feet away from the VIRA. After a while, he observed that the LESNOY had stopped and that it was stationary at a distance of about 200 metres away from his vessel the VIRA.

The defendants however did not call anyone from the LESNOY as witnesses. Their only witnesses comprised someone from the Singapore Adjusters & Surveyors Ltd. who produced the survey certificate and two other witnesses, Capt. Clarke and Capt. Rivers. Apart from Capt. Clarke, the defendants called Capt. Rivers, a Master Mariner with considerable experience who has acted as assessor in collision cases and who has given expert evidence before. In fairness to both of them, they were not in a position to state how the accident occurred as they were not at the scene of the collision.

According to Capt. Rivers, the wind and tide may have been sufficiently strong to cause either one or both vessels to drag anchor. Under cross-examination, Capt. Rivers stated that the possible change of wind could have an effect on either vessel and it is possible that the LESNOY was pushed forward.

Capt. Clarke in his evidence said that he had considered the bearings taken by the Master of the VIRA and in his opinion the bearings taken were too close together and that it was extremely difficult to measure the true position of the VIRA. He also said that he was unable to state the margin of error. He went on further to say that he could not believe that the anchor chain of the LESNOY was at an angle of 45° and that the vessel was not likely to drag anchor at slack water. He further stated that the damage to the VIRA was consistent with the LESNOY having started its engines or due to some little movement on the part of the LESNOY. On the question of movement of the LESNOY, I append below the answers given by Capt. Clarke to the questions put to him in cross-examination: —

"*Q.* Damage to *Vira* is consistent with *Lesnoy* having just started its engines or having very little weigh (movement).
A. Yes.
Q. During slack water is it possible for a vessel at anchor without working her engines to move forward.
A. Correct.
Q. Such a forward movement is a slow process.
A. Correct.
Q. Noticeable.
A. Yes.
Q. How long would it take.
A. 5-10 minutes.
Q. Enough time for one on board the ship to notice it and take corrective action.
A. Yes.
Q. If you saw through a port hole a vessel 15-20 feet away you would have no difficulty in noticing it.
A. I should imagine not.
Q. Assuming the vessel is coming forward with its anchor chain, it is noticeable.
A. Yes.
Q. Assuming it is coming forward at some speed and there are crew on the stationary vessel it would be natural for them to raise alarm.
A. Yes.
Q. It would be unusual for a vessel to use her engines with her anchor down.
A. Yes.
Q. Under certain circumstances it is done.
A. Yes.
Q. You would not do it.
A. Depending on circumstances.
Q. We don't know what happened on the *Lesnoy*.
A. No."

Capt. Rivers and Capt. Clarke did their best to assist the court indicating what conditions could be expected having regard to the weather, tides and wind on that day. However, they were purely generalising. Capt. Rivers conceded that the forward movement of the LESNOY could have been due to her engines. Under cross-examination Capt. Clarke agreed that the swing of the vessel could not cause the anchor chain to be in a position leading 45° aft and it was consistent with the LESNOY having just started her engines. Both Capt. Clarke and Capt. Rivers were of the view that neither vessel could have dragged their anchor.

Both PW1 and PW2 in evidence were adamant about the fact that their vessel VIRA was stationary and that at no time had it moved from its moorings and PW2 in particular said that he saw the LESNOY approaching, he heard the impact and when he went on the deck he saw the said vessel stationary and after a while move away from the VIRA. They were both subjected to a lengthy cross-examination but they were not shaken and their evidence not rebutted. I was impressed with the manner in which they gave their evidence. They were witnesses of truth.

Now in the case of a collision in daylight between a ship under way and another which is proved or admitted to be lying at anchor in a proper place, the burden is upon the former to show that she was not at fault, for when a steamship runs down a vessel at her moorings in broad daylight, that fact is by itself *prima facie* evidence of fault — *Marsden*, British Shipping Laws, Collision at Sea, Vol. 4 at page 38. Again in the *"City of Peking"* v. *The Compagnie Des Messageries Maritimes*,[1] the Law Lords held that where a vessel under steam runs down a ship at her moorings in broad daylight, that fact is by itself *prima facie* evidence of fault, although such steamer is well equipped, and both officers and men are shown to have been at their posts and on the lookout. There was nothing in the evidence to suggest who was in charge of the LESNOY at the time of the collision or whether there was anybody on board the LESNOY. All we do know is that the Chief Engineer of the VIRA said in evidence that after the collision three people from the LESNOY came to his ship.

The defendants did not call a single person on board the LESNOY to give evidence as to whether or not the ship had moved and if it had, how it moved and whether it moved on its own steam and if so why or whether the vessel had dragged its anchor.

The defendants have failed to discharge the onus. I find as of fact that the vessel LESNOY was solely to blame for the collision. Judgment to plaintiff. Damages are to be assessed by the Registrar. Costs to the plaintiff.

Claim allowed.

Solicitors: *Drew & Napier; Rodyk & Davidson.*

MALAYSIAN REPORTS

MICHAEL BEN ANAK PANGGI v. PUBLIC PROSECUTOR

[A.C.J. (Yusoff J.) October 24, 1977 & March 9, 1978]
[Kuching — Criminal Appeal No. K. 8 of 1976]

Criminal Law and Procedure — Power of appellate court — Appellate court at liberty not to order a re-trial by reason of misdirection — Criminal Procedure Code (F.M.S. Cap. 6), s. 316(b)(ii) — Penal Code (F.M.S. Cap. 45), s. 379 — Courts of Judicature Act, 1964, s. 66(1).

Constitutional Law — Disqualification by court barring applicants from seeking future election to Dewan Negeri — Disqualification not automatic — Whether unconstitutional and in contravention of art. 19 of Sarawak Constitution — Sarawak Constitution, arts. 17(1)(e), 18(2)(a) & 19 — Federal Constitution, arts. 8, 48(1)(e) & 53.

Federal Court — Reference to — Scope of s. 66 of the Courts of Judicature Act, 1964.

The applicant in this case was convicted under section 379, Penal Code which conviction was affirmed by the High Court on appeal and his sentence varied from one of ten months' imprisonment to a fine of $2,000. He contended that the appellate court determined there were misdirection on points of law by the lower court. The question posed was therefore whether the appellate court could, in view of section 316(b) of the Criminal Procedure Code disagree to alter the finding or quash the conviction or order a re-trial because of the history of the case. It was also argued that the direct result of the sentence would be to disqualify the applicant from continuing to be a member of the Dewan Negeri. This, he argued, contravened article 19 of the Sarawak Constitution. The applicant sought to have the above questions of law referred to the Federal Court under section 66(1) of the Courts of Judicature Act.

Held: (1) questions of law which may be referred to the Federal Court under section 66 of the Courts of Judicature Act should not be questions that are of personal interest only to the accused or the Public Prosecutor. The questions should be of public interest so that references are not used as an indirect way of appealing against matters that under the law have been finally determined by the High Court;

(2) it is within the power exercisable by an appellate court under section 316(b)(ii) of the Criminal Procedure Code not to order a re-trial by reason of a misdirection, depending on the evidence and circumstances in each case, particularly when such misdirection was not fundamental;

(3) the applicant was not automatically disqualified and did not cease to be a member of the Dewan Negeri upon his conviction. A question in the council had to be raised on such disqualification before the Dewan Negeri could take a decision to disqualify him and determine his tenure of seat;

(4) the court in an appropriate case, is empowered to impose a sentence that would disqualify a person from membership of parliament or state legislature without contravening article 53 of the Federal Constitution or article 19 of the Sarawak Constitution;

(5) an award of different sentence for the same offence according to the circumstances of each case does not infringe the principle of equality before law.

Cases referred to:-

(1) *Ibrahim bin Haji Karim* v. *Public Prosecutor* [1976] 1 M.L.J. 280.

(2) *Tan Yin Yen* v. *Public Prosecutor* [1973] 2 M.L.J. 143.

(3) *Nadarajah* v. *Public Prosecutor* [1969] 1 M.L.J. 108.

(4) *R.* v. *Johnson* [1961] 3 All E.R. 969.

(5) *Tengku Mahmood* v. *Public Prosecutor* [1974] 1 M.L.J. 110.

(6) *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor* [1977] 2 M.L.J. 155, 178.

(7) *Fan Yew Teng* v. *Government of Malaysia* [1976] 2 M.L.J. 262.

(8) *Fan Yew Teng* v. *Setiausaha Dewan Ra'ayat & Ors.* [1975] 1 M.L.J. 40, 42.